The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

August 6, 2025
SPR25/2192

Helen Rush-Lloyd
Records Access Officer
Department of Public Health
250 Washington Street, Second Floor
Boston, MA 02108

Dear Ms. Rush-Lloyd:

I have received the petition of Jonathan Gerhardson appealing the response of the Department of Public Health (Department) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On June 13, 2025, Mr. Gerhardson requested the following:

> [1] A recording of a webinar held June 12 at 1 pm related to the transition away from caremass.org…
> - Any slideshows, documents, etc. related to that webinar.
>
> [2] An index of all content hosted at caremass.org. It may be named index.php[.]
>
> [2] [*sic*] Contracts and scope of services documents between the state and RIZE. Past 6 months.
>
> [3] [*sic*] A[.]

The Department responded on June 16, 2025, June 30, 2025, July 14, 2025, July 21, 2025 and July 25, 2025, assigning the request reference number BSAS-2025-36. Unsatisfied with the Department's responses, Mr. Gerhardson petitioned this office and this appeal, SPR25/2192, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or

municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response, a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

The Department's June 16th, June 30th, July 14th, July 21st, and July 25th Responses

On June 16, 2025, the Department stated, "[y]our public records request has been received... Number 3 appears incomplete, please clarify if there is an additional piece of information you are looking for."

In its June 30, 2025 response, the Department stated, "[i]n order to gather responsive documents, we will require [an] extension to 7/11/2025." In reply to the Department on the same day, Mr. Gerhardson asked, "[i]s this recording of the June 12 webinar about the transition away from caremass.org. available sooner?"

On July 14, 2025, the Department stated, "[a]pologies for the delay. We will need another brief extension for this request to 7/21/2025."

After a follow-up inquiry from Mr. Gerhardson, the Department responded on July 21, 2025, "[t]his production is in the final stages of review; I hope to get it to you as soon as possible."

On July 25, 2025, after a further follow-up from Mr. Gerhardson, the Department provided responsive documents and stated, "[i]f you are unable to open the html documents, we've provided a Word document listing the content of the html documents… Nothing has been redacted or withheld… DPH now considers this request to be closed."

After Mr. Gerhardson expressed trouble accessing "anything in the site," the Department responded, "…can you clarify which of the links are you having trouble with? Is it the recording link or the links from the word doc? We have a few people out on vacation this week so I will try to get you new versions but may not be able to until next week."

Mr. Gerhardson further stated that, "[e]very url provided requires a login," and "some links that did not prior to my request now link to Rize," to which the Department responded, "[t]he index was meant to be a log with the understanding that the CareMass website was going

to be deactivated as of July 1, 2025 so that is why the links don't work. The website is no longer available, so we provided the log. You can open the video link using windows media player."

Current Appeal

In his appeal petition, Mr. Gerhardson stated, "[a]fter BSAS requested two extensions to produce these records, I am now being told they have been deleted. They existed at the time I made this request. If this does not break the public records law, I expect it instead would be in violation of G .L. c. 266, § 127 as this request was made prior to the destruction of these records, and their value exceeds $1,200. When I made my request, caremass.org was still operational."

In a conversation between the Department and this office on July 30, 2025, the Department confirmed that it possesses no additional responsive records to Mr. Gerhardson's request.

Records Management

Public records must be maintained and kept in a manner that allows access by the general public, as they are subject to mandatory disclosure upon request. See G. L. c. 66, § 10(a); see also Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 289-90 (1979). For further guidance in records management and retention, the Department may contact the Records Management Unit (RMU) at 617-727-2816. The RMU operates under the authority of the Supervisor of Records, assisting state and local government entities in creating, managing, securing, and preserving records needed to conduct business and protect the rights and obligations of citizens and government. Training workshops on records management are conducted upon request. Safeguards must be instituted by the Department to ensure that all records are retained in accordance with both applicable law as well as the retention schedules promulgated by this office. See G. L. c. 66, § 8; G. L. c. 66, § 13 and G. L. c. 66, § 15.

No Duty to Create Records

Please be advised, under the Public Records Law a custodian is not required to create a record in response to a public records request. See G. L. c. 66, § 6A(d). In addition, a public employee is not required to answer questions, or do research, or create documents in response to questions. See 32 Op. Att'y Gen. 157, 165 (May 18, 1977). Further, the duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii).

Issues Outside the Authority of this Office

In addition to issues regarding the Public Records Law, Mr. Gerhardson's appeal petition alleges violations of G. L. c. 266 § 127. Please be advised that the Office of the Supervisor of Records is statutorily empowered with the authority to determine the public record status of government records. See G. L. c. 66, § 10. Further, in compliance with the Public Records Law, the Supervisor of Records may only issue determinations where a violation of G. L. c. 66, § 10

has been alleged. See G. L. c. 66, § 10A(a). Given that G. L. c. 266 § 127 concerns the willful, malicious or wanton destruction or injury to the personal property, dwelling house or building of another, and does not fall within the authority of this office, I am unable to address this issue in this determination.

Conclusion

Given that portions of the requested records no longer exist and this office has no authority to compel the Department to create a record, I will now consider this administrative appeal closed. If Mr. Gerhardson is not satisfied with the resolution of this administrative appeal, please be advised that this office shares jurisdiction with the Superior Court of the Commonwealth of Massachusetts. See G. L. c. 66, § 10A(c) (pursuing administrative appeal does not limit availability of applicable judicial remedies).

Sincerely,

Manza Arthur
Supervisor of Records

cc: Jonathan Gerhardson